ILLINOIS COMMERCE COMMISSION DOCKET #98-0555
SBC/AMERITECH MERGER
CONDITION 27
INTERCONNECTION COLLABORATIVE

REPORT OF THE STAFF
OF THE
ILLINOIS COMMERCE COMMISSION

June 2, 2000

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INTRODUCTION

A. Introduction

Merger Condition No. 27 of the Commission's September 23, 1999 Order in Docket #98-0555 deals with certain interconnection issues arising from the SBC/Ameritech merger transaction. Condition No. 27(A) requires SBC/Ameritech to provide to CLECs in Illinois interconnection provisions offered by SBC ILEC affiliates in their in-region states. Condition No. 27(B) established a collaborative process involving SBC/Ameritech, competitive local exchange carriers and Staff to coordinate and facilitate matters involving interconnection requirements of the Order. The full text of Condition 27 is attached to this report as Appendix 1.

The Order directed Staff to facilitate the collaborative process. The CLECs were to identify and select specific provisions they wish to incorporate from out-of-state interconnection agreements and SBC/Ameritech was to either accept or deny each request. Where SBC/Ameritech denies a request, the denial must be based on criteria identified in the Order: (1) technical infeasibility; (2) unlawfulness; or (3) contrary to Illinois policy. Staff was directed to comment on the merits of each instance of an SBC/Ameritech denial.

Pursuant to the Commission's Order, collaborative meetings between SBC/Ameritech and interested CLECs, facilitated by Staff, were held on November 18, 1999, December 8, 1999, December 16, 1999 and January 5, 2000.[1] This report summarizes the results of that collaborative, and sets forth Staff's conclusions regarding interconnection provision requests submitted by CLECs but denied by SBC/Ameritech. In addition, this report addresses a number of policy and procedural issues that arose during the collaborative, several of which require resolution in order to implement the requirements contained in Condition No. 27 of the Order.

The first section of this report sets forth the positions of SBC/Ameritech, the CLECs and Staff on the most important of these overarching policy and procedural issues. The second section summarizes the specific interconnection requests submitted by CLECs and provides Staff's conclusions regarding the disposition of these requests. This report does not address legal issues and questions that arose during the collaborative. The Commission's Office of General Counsel is providing all required legal analyses and recommendations separately directly to the Commission.

[1] A list of participants is attached as Appendix 2.

GENERAL POLICY AND PROCEDURAL ISSUES

At the outset of the collaborative, several issues were identified that require resolution in order to bring the collaborative to a fruitful conclusion. These include disagreements between CLECs and SBC/Ameritech concerning possible tariffing requirements, expedited processes for approval of CLEC interconnection requests, expiration dates of "imported" interconnection provisions, the availability of provisions in the Texas "T2A" document, and of general interconnection operating procedures and practices. At Staff's request, participants produced a document identifying each issue and setting forth SBC/Ameritech's and the CLECs' positions on each issue. This document is attached to this report as Appendix 3.[2]

The first section of this Staff report briefly summarizes the SBC/Ameritech and CLEC positions on a number of these issues and provides Staff's analyses and conclusions regarding these issues.[3] Not every issue contained in Appendix 3 is discussed here, since not every issue requires resolution in order to carry out the Commission's directives concerning Condition 27. Moreover, there is some duplication and overlap in the original list of issues, and in some cases SBC/Ameritech and the CLECs do not fundamentally disagree, eliminating the need for Staff analysis.

Several of these issues raise legal questions or contain legal dimensions, which are not addressed in this report. Neither does this report contain any detailed discussion concerning the proper interpretation of the language of Condition 27 or of the evidentiary record in the merger proceeding. As noted, the Commission's Office of General Counsel is providing legal analyses and recommendations separately directly to the Commission.

FIRST ISSUE

EXPEDITED PROCESS: should there be an expedited process for CLECs to adopt interconnection provisions "approved" during the collaborative process?

Staff Conclusion: Yes. All interconnection provisions made available to CLECs pursuant to Condition 27 should be provided on an expedited basis. However, timely tariffing of these provisions, as recommended by Staff, would reduce the need for an expedited process unique to Condition 27 requests.

[2] CLECs addressed these issues collectively, rather than as individual companies. Subsequent to the last collaborative meeting, Rhythms and Covad jointly submitted supplemental comments.

[3] These staff recommendations were formulated based on the participants' position statements and informal discussions with participants during the collaborative. Staff reserves its right to alter these positions based on additional information, new arguments presented by parties, or directives issued by the Commission.

SBC / Ameritech Position:

SBC/Ameritech asserts that this request is outside the scope of the collaborative process established by the Commission. It points to specific language in the Order which it believes indicates the Commission intent that the primary process for implementing condition 27 should be the "negotiation/arbitration" process. Specifically, the closing paragraph of Condition 27(A) states: "While the process for negotiating and incorporating proposed changes to interconnection agreements resulting from Condition A will be dictated by the normal Section 252 negotiation/arbitration process, Ameritech shall begin reviewing such proposed changes within 30 days of the Merger Closing Date."

SBC/Ameritech further argues that the Commission already has an expedited process for reviewing and approving interconnection agreements under Section 252(i) of TA96. SBC/Ameritech points to the fact that many carriers have previously utilized that approach rather than electing to undertake a "fresh start" negotiation. The 1996 federal Telecommunications Act ("TA96") and the Commission's Rules specify the process for the negotiation and approval of contracts.

While SBC/Ameritech believes the question is outside the scope of the collaborative, in discussions with staff it indicated agreement that an expedited process for implementation of interconnection provisions approved during the collaborative is appropriate.

CLEC Position:

The CLECs believe the Order contemplates "automatic adoption" of any agreed-upon provisions stemming from the collaborative process, pointing to the following language: "The Commission finds this condition to be valuable to CLECs and the expansion of the competitive market in Illinois, particularly since Section 252(i) of TA96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states." [4]

The CLECs assert that requiring CLECs to negotiate with SBC/Ameritech for these terms after the collaborative process, and then to obtain Commission approval to revise existing interconnection agreements will serve no useful purpose and will significantly delay the pro-competitive impact of Condition 27.

The CLECs contend the Commission does not currently have an "expedited process" for reviewing and approving interconnection agreements under Section 252(i) of TA96. The CLECs further point out that the Commission has treated such requests as

[4] As an alternative to an "automatic adoption" process, CLECs contend the Commission could simply require SBC/Ameritech to tariff all interconnection agreements/arrangements approved during the collaborative process.

"negotiated" agreements for approval purposes, and has applied the process for approval of negotiated agreements found in Part 763 of the Illinois Administrative Code. According to the CLECs, under the Commission's current approach a CLEC has no assurance that a provision it desires to import from an SBC interconnection agreement in another state will be approved in less than 90 days.

The CLECs believe it is clear from language in the Merger Order that an "automatic adoption" process should be implemented, and that such a process is not outside the scope of this collaborative process. Such a procedure also would be consistent with the FCC's rules implementing TA96, which provide that a state commission should have an expedited process in place for approving interconnection agreements pursuant to Section 252(i). They concede that SBC/Ameritech correctly cites language in Condition 27(A) referring to the use of a negotiation/arbitration process for incorporating proposed changes to interconnection agreements in Condition 27(A). However, they argue that nowhere does the Commission preclude an expedited process.

The CLECs point to the Indiana Utility Regulatory Commission ("IURC") as a model. The IURC has adopted an expedited process for approving interconnection agreements pursuant to 252(i) that the Commission may want to explore. On December 9, 1999, the IURC issued guidelines for 252(i) adoptions. Under those guidelines, a carrier may file a request for adoption of a previously approved interconnection agreement by submitting a signed letter setting forth the adoption of the prior agreement. The agreement itself need not be filed. The letter must describe any changes to the original agreement made by the requesting carrier, although those changes may not modify the substance of the original agreement. Within twenty days following the filing, comments may be submitted by either: (i) the Office of the Utility Consumer Counselor, or (ii) a telecommunications carrier not a party to the Agreement. While the guidelines themselves do not so provide, as a matter of practice, the IURC will issue an order approving or rejecting the adoption within 30 days of the initial request.

Staff Analysis:

Staff believes it is important to ensure there is no undue delay in availability of interconnection arrangements provided as a result of this collaborative, or as a result of application of Condition 27 subsequent to the collaborative. Such delay could frustrate the pro-competitive intent of Condition 27 of the Commission's Order.

The Order provides that the "process for negotiating and incorporating proposed changes to interconnection agreements… will be dictated by the normal Section 252 negotiation/arbitration process…". At the same time, the Order makes reference to "automatic adoption" of interconnection arrangements. Neither of these statements addresses specifically the time period involved for approval. Staff believes the current Section 763 process contains at least the potential for unwarranted delay in availability

of interconnection arrangements imported under Condition 27.[5] The Commission's Order does not preclude the use of an expedited process, and Staff believes adoption of an expedited process would reflect the pro-competitive intent of the Commission's Merger Order.

Staff notes that the FCC has determined that the pro-competitive purposes of Section 252(i), under which CLECs may "opt into" provisions of existing approved interconnection agreements, could be defeated if CLECs are required to undergo the more lengthy Section 252 process utilized for adoption of entire agreements. It thus authorized state commissions to establish expedited processes to apply when CLECs opt-into previously approved contract provisions, leaving to individual state commissions the task of establishing such procedures to apply within their respective states. In Staff's view, the same concerns exist when Illinois CLECs import out-of-state contract provisions under Condition 27; lack of an expedited process similarly could defeat or delay the pro-competitive objectives of Condition 27. [6]

SBC/Ameritech informed staff during the collaborative that it agrees that an expedited process for adoption of interconnection provisions approved during the collaborative is appropriate. However, it maintains that the normal Section 252 process should apply to all interconnection requests submitted by CLECs under Condition 27 subsequent to the collaborative. Staff disagrees with this position, and believes an expedited process should apply to all requests submitted by CLECs pursuant to Condition 27.[7] However, in Staff's view, as set forth in discussion of the following issue, timely tariffing of interconnection arrangements imported under Condition 27 could reduce the need for such an expedited process. [8]

[5] Currently, Part 763 of the Commission's rules governs the procedure for approval of negotiated agreements within Illinois. The CLECs contend that SBC/Ameritech may use that procedure to delay the implementation of "approved" interconnection agreements/arrangements (i.e., those interconnection agreements/arrangements identified by CLECs during the collaborative to which SBC/Ameritech raises no objection. Provisions SBC/Ameritech objects to on grounds allowed by the Commission are excluded from the set of "approved" interconnect agreements/arrangements.

[6] The difference in the two cases is that interconnection provisions from Illinois in-state contracts opted into by CLECs would have been approved previously by the ICC. In contrast, out-of-state contract provisions requested by CLECs under Condition 27 have not been approved by the ICC, but rather by another state commission.

[7] Staff recognizes, of course, that there is a fundamental difference between requests processed during the collaborative and those submitted afterwards; the latter would not have been analyzed and processed during the collaborative.

[8] Staff believes an expedited process need not necessarily depart substantially from existing Section 252 procedures. For example, it could be sufficient simply to impose reasonably short deadlines upon existing processes.

SECOND ISSUE

TARIFFING INTERCONNECTION PROVISIONS: should Ameritech tariff interconnection provisions provided to CLECs pursuant to the requirements of Condition 27?

Staff Conclusion: Yes. Ameritech should submit tariffs for interconnection services and arrangements provided under Condition 27.

SBC / Ameritech Position:

SBC/Ameritech believes this CLEC request is outside the scope of this collaborative. s. It contends the Commission recognized the "negotiation/arbitration" process as the primary means for implementing condition 27. In particular, it cites the closing paragraph of Condition (27) (A), which states:

> While the process for negotiating and incorporating proposed changes to interconnection agreements resulting from Condition A will be dictated by the normal Section 252 negotiation / arbitration process, Ameritech Illinois shall begin reviewing such proposed changes within 30 days of the Merger Closing Date.

SBC/Ameritech believes the tariffing process proposed by CLECs is not a negotiation, and cites the closing paragraph of Conditions (27) (B) to support its position:

> Condition B and this workshop process are ancillary to Condition A. Should any disagreement arise as to whether an interconnection arrangement requested of Ameritech Illinois is subject to the exemptions under Condition A of technical infallibility or unlawful or contrary to Illinois policy, the Commission expects that any parties negotiating for interconnection terms under Condition A shall make use of the Staff's report in those negotiations. [emphases added]

CLEC Position:

The CLECs assert that a tariffing requirement is applicable and is not outside the scope of this collaborative. They believe SBC/Ameritech is required by law to tariff all services, facilities, interconnection arrangements and agreements it provides as a result of this collaborative. Section 13-501 of the Illinois Public Utilities Act ("PUA") requires SBC/Ameritech to tariff all telecommunications services it provides. The CLECs insist there can be no exception here.

CLECs argue that tariffing would not only enable all CLECs to obtain desired services, facilities and interconnection arrangements in an expeditious manner, but would also allow CLECs without interconnection agreements with SBC/Ameritech to reap the pro-competitive benefits of Condition 27. Tariffing has the further benefit of helping to assure that all CLECs are treated in a nondiscriminatory fashion.

CLECs do not dispute that SBC/Ameritech accurately quotes various language from Conditions (27)(A) and (B) of the Commission's merger order. They respond, however, that "there is no hint" by the Commission that the negotiation/arbitration process should be the only way or exclusive way of obtaining such services, facilities or arrangements. They point out that some of SBC/Ameritech's tariffs (including its UNE, ULS-IST and collocation tariffs) are generally available to all CLECs for the purpose of interconnecting with SBC/Ameritech. They argue those tariffs are not informational only, but have been filed by SBC/Ameritech in accordance with its obligation under Section 13-501 of the PUA to tariff all telecommunications services it provides. These are for use by CLECs irrespective of whether a given CLEC has an existing interconnection agreement with SBC/Ameritech.

In sum, the CLECs believe that SBC/Ameritech is required by the PUA to tariff the results of the collaborative process, and the Commission's merger order does not relieve SBC/Ameritech of its tariffing obligations. The Merger Order does not require that interconnection agreements are the exclusive or only way CLECs can obtain interconnection provisions imported under Condition 27.

Staff Analysis:

Staff takes no position here on the question of whether Ameritech is required as a matter of Illinois law or Commission regulation to tariff interconnection services and arrangements provided pursuant to Condition 27 of the Merger Order.[9] This report does not address such questions; all required legal analyses are being provided separately to the Commission.

Staff believes there are several significant benefits associated with the provision of interconnection services and arrangements through tariff, even where many interconnection arrangements are provided pursuant to negotiated agreements. Tariffing would ensure availability of imported interconnection provisions to all Illinois CLECs, including those not having negotiated agreements with Ameritech. It also

[9] CLEC arguments in this regard rest on PUA Section 13-501, which provides as follows: "No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which the service shall be offered or provided. The Commission may prescribe the form of such tariff and any additional data or information which shall be included therein." 220 ILCS 5/13-501 (emphasis added).

reduces or eliminates the potential for SBC/Ameritech to discriminate between CLECs in the provision of interconnection arrangements.

Tariffing interconnection provisions imported pursuant to Condition 27 also may best balance the significant competing interests of SBC/Ameritech and the CLECs concerning appropriate expiration dates of imported interconnection provisions. This is considered in detail in the subsequent discussion of expiration dates.

Staff finds nothing in the Merger Order that would restrict or preclude tariffing interconnection arrangements provided pursuant to Condition 27. SBC/Ameritech correctly points out that Condition 27 does not require such tariffing, and that there is explicit language indicating the "normal" negotiation/arbitration process would apply. However, CLECs also are correct in pointing out that there is nothing in Condition 27 to preclude Ameritech from tariffing these items. In light of the benefits associated with this approach, Staff recommends that SBC/Ameritech tariff interconnection services and arrangements provided pursuant to Condition 27. Since tariffing all pre-approved interconnection provisions can be accomplished expeditiously, the concerns raised by CLECs regarding undue delay would be alleviated.

THIRD ISSUE

DATES OF NEGOTIATED AGREEMENTS: Should any non-expired interconnection agreement from SBC's in-region states be eligible for consideration under Condition 27, including those that SBC does not intend to renew?

Staff Conclusion: Yes.

SBC / Ameritech Position:

SBC/Ameritech believes that non-expired provisions may be included in the list of desired provisions generated by the collaborative process, provided at the time of the collaborative the provision is technically feasible, lawful and consistent with Illinois policy. However, it believes that the ability to include such a provision in subsequent negotiations (i.e., those commenced after the closing date of the collaborative) could be impacted by the expiration date or the fact that the contract is no longer effective at the time the negotiation takes place. SBC/Ameritech believes that during negotiations it would be improper for a carrier to claim they can adopt expired or terminated provisions.

CLEC Position:

The CLECs believe that SBC/Ameritech's response implies limitations and restrictions that do not appear in the Commission's merger order. In their opinion, the order is clear that "interconnection provisions shall be available for an *indefinite* time in Illinois." CLECs argue that if the Commission does not require interconnection provisions under Condition 27 to be available for an "indefinite time", they should be able to import provisions from any unexpired interconnection agreement in an SBC in-region state.

The CLECs similarly reject suggestions made by SBC/Ameritech at the December 8, 1999 collaborative meeting that CLECs may not be entitled to import provisions from out-of-state SBC contracts that may be about to expire. They contend Condition 27 does not grant SBC/Ameritech the right to refuse CLEC requests based on the fact that an SBC agreement is "about to expire". Neither does it bestow upon SBC/Ameritech the discretion to deny CLEC requests based upon its own determination that there is sufficient time remaining in an SBC agreement to warrant importation. The CLECs contend that if this SBC/Ameritech position prevails, it would effectively be able to exclude nearly all agreements, thus rendering Condition 27(A) useless.

Staff Analysis:

Contrary to the view of the CLECs, the Order requirement that " Such interconnection provisions shall be available for an indefinite period of time in Illinois" does not apply to particular interconnection provisions requested by CLECs, but rather to the duration of Condition 27 itself. This language provides that Condition 27 has no expiration or "sunset" date, and ensures that CLECs may import eligible out-of-state interconnection provisions into their Illinois contracts for an "indefinite time". Staff believes this is why this language appears solely in the preface to Condition 27, rather than anywhere in Condition 27(A) through (D).

The Order does not limit the eligibility of specific interconnection provisions for importation due to the eminent expiration of an out-of-state contract or the fact that SBC does not intend to renew a particular contract. Staff sees no justification for such limitations. In Staff's view, any interconnection provision that would be unexpired at the time of importation into Illinois is importable, regardless of SBC's intent concerning the future of the underlying out-of-state contract.

This analysis does not address the issue of the appropriate expiration date of imported interconnection provisions, which is discussed below.

FOURTH ISSUE

DATES OF NEGOTIATED AGREEMENTS: Should interconnection provisions imported from out-of-state contracts into Illinois contracts expire with the Illinois contract or upon expiration of the out-of-state contract?

Staff Conclusion: The expiration date of the out-of-state interconnection agreement should apply. Tariffing of imported interconnection provisions will ensure availability of these provisions to CLECs for reasonable time periods.

SBC / Ameritech Position:

SBC/Ameritech argues that the termination date of an interconnection agreement is a closely related term and condition of any individual provision in that agreement. According to SBC/Ameritech, since the parties to the original contract reached agreement as to when that contract would expire, a CLEC adopting any portion of that agreement cannot extend that expiration date by importing it into a new contract. In SBC/Ameritech's view, the CLEC proposal would arbitrarily and improperly extend the life of a contract provision beyond the date agreed to by the original parties. It believes the CLEC position could obligate it to provide interconnection provisions indefinitely or at least well beyond the date of SBC/Ameritech's original commitment.

CLEC Position:

CLECs dispute SBC/Ameritech's contention that an expiration date is integrally related to individual interconnection provision. They argue an interconnection provision provides for the same thing, irrespective of the date the agreement from which it is imported expires. Thus, CLECs believe SBC/Ameritech's position has no basis or support in the Commission's merger order, and characterize it as an attempt by SBC/Ameritech to hamper the pro-competitive results the Commission intended for this collaborative. In short, CLECs contend there is no substantive or dependent relationship between the provisions being imported and the termination date, and there is no requirement to import the termination date. Nor does the Commission's Merger Order allow SBC/Ameritech to impose a termination date different from the one already contained in the requesting CLEC's Illinois agreement.

CLECs disagree that importing provisions from other SBC agreements absent the termination date would arbitrarily extend the life of such provisions. They argue that, as a condition of approving the Ameritech/SBC merger, the Commission gave CLECs the right to import specific provisions from other SBC agreements into their existing Illinois agreements. Those existing Illinois agreements are governed by the termination

dates expressly set forth in the agreements. The process of importing UNEs, services, facilities, arrangements and agreements offered by SBC ILEC affiliates is one that is Commission-ordered and Commission-sanctioned, and thus is not arbitrary.

CLECs also believe that importing the termination date of an out-of-state contract would raise significant legal and practical problems. They believe adoption of SBC/Ameritech's position would create confusion and administrative havoc because Illinois CLECs could then have interconnection agreements containing numerous expiration dates. In their view, not only does this constitute bad policy, but they ask "what happens when the first expiration date is reached?" Do the parties engage in "partial" negotiations and arbitration, negotiating some provisions now and more when the next expiration date arrives, and the next?

Staff Analysis:

The Order does not specify which expiration date - that of the underlying out-of-state contract or of the Illinois contract - should apply to interconnection provisions imported under Condition 27.[10] Staff believes that both SBC/Ameritech and the CLECs raise valid and significant concerns regarding the issue of expiration dates.

SBC/Ameritech points out that the CLEC position could require it to provide particular interconnection arrangements indefinitely, or at least beyond the date of SBC/Ameritech's original commitment (and perhaps beyond when technological, economic or other changes would render an interconnection arrangement obsolete or otherwise not viable).[11] CLECs point out that SBC/Ameritech's position would saddle them with significant uncertainty and serious business planning difficulties. They believe the multiple expiration dates associated with SBC/Ameritech's position would result in burdensome and perhaps unworkable multiple negotiations and arbitrations.

Staff finds there is merit to each of these arguments, but believes there is a viable and direct means to reconcile these competing considerations. Timely tariffing of all interconnection provisions imported under Condition 27 would avoid the problems cited by both the CLECs and SBC/Ameritech, and would properly balance the competing interests of these parties. Tariffing would simultaneously ensure availability of desired interconnection arrangements to CLECs for reasonable time periods, while providing that interconnection provisions are not extended beyond their useful or practical life. Specifically, SBC/Ameritech could file to withdraw or revise an interconnection tariff where deemed appropriate pursuant to the Commission's established tariff procedures. Similarly, CLECs could object to any such proposed tariff changes they find to be inappropriate. Commission tariff oversight would ensure that interconnection

[10] As previously discussed, the Order statement that " Such interconnection provisions shall be available for an indefinite period of time in Illinois" does not refer to the duration of particular or specific interconnection provisions requested by CLECs , but rather to the duration of Condition 27 itself.

[11] A worst case (but conceivable) scenario contemplated by SBC/Ameritech could result if a provision repeatedly is imported from one agreement to the next in a "daisy-chain" fashion, thus extending the life of a provision indefinitely.

provisions continue to be available as appropriate, but do not outlive their usefulness or become technically inappropriate or insupportable. In sum, with tariffing, use of out-of-state expiration dates will not materially disadvantage CLECs; when a particular imported provision expires, the CLEC would simply order the same arrangement out of the tariff. At the same time, this will avoid the circumstances feared by SBC/Ameritech.

FIFTH ISSUE

Tariffs and General Operating Practices: Should general interconnection operating practices and interconnection provisions contained in SBC's in-region state tariffs be eligible for importation into Illinois agreements under Condition 27.

Staff conclusion: Such provisions should not be considered eligible for consideration under Condition 27.

SBC / Ameritech Position:

SBC/Ameritech believes tariffs and operating practices not part of existing interconnection agreements are outside the scope of the collaborative. In its view, only provisions contained in negotiated interconnection agreements are eligible for consideration under Condition 27. Moreover, such interconnection provisions must have been " freely negotiated".

SBC/Ameritech emphasizes the distinction drawn in the Order between interconnection arrangements reached through "voluntary agreement", and those imposed through arbitration. It believes the Commission's intended that interconnection provisions voluntarily entered into by SBC are the sole items eligible for importation under Condition 27. Since it believes the only agreements entered into by SBC voluntarily are those in negotiated interconnection agreements, it follows that these are the only items eligible for consideration under Condition 27.

CLEC Position:

The CLECs dispute SBC/Ameritech's view that Condition 27 applies only to interconnection provisions from "freely negotiated" voluntary agreements, and that tariff provisions and other non-negotiated items are outside the scope of Condition 27. They contend Condition (27)(A) of the Commission's Order makes very clear that "freely negotiated" is not the proper standard. They believe the only interconnection provisions not eligible for consideration under Condition 27 are those "UNEs, services, facilities or interconnection agreements/ arrangements which have been imposed by SBC by another state as a result of an arbitration." Thus, in their view, SBC/Ameritech

is required to consider under Condition 27 all UNEs, services, facilities and interconnection arrangements/ agreements not imposed upon SBC by arbitration, regardless of whether they appear in an interconnection agreement.

By this reasoning, not only tariffs, but also general operating practices not part of existing interconnection agreements are eligible for consideration. Specifically, CLECs maintain any operating practices not imposed upon SBC by arbitration are eligible for consideration. They see no requirement that such operating practices must exist in an SBC ILEC affiliate interconnection agreement to fall within the scope of this collaborative.

CLECs believe that references in Condition 27 to ".. UNEs, services, facilities or interconnection agreements/arrangements…" indicate the Commission's intent that Condition 27 apply to items beyond those in interconnection agreements. They point out that "UNEs", "services", "facilities" and "interconnection arrangements" can be found in tariffs and in handbooks setting forth operating practices. CLECs also believe the distinction drawn between voluntary agreements and those imposed through arbitration was meant to exclude solely arbitrated provisions. Thus, every interconnection arrangement but those imposed through arbitration is eligible for consideration under Condition 27.

Staff Analysis:

On this issue, SBC/Ameritech and the CLECs agree only that interconnection provisions clearly imposed upon SBC as a result of arbitration are not eligible for consideration under Condition 27. Beyond that, they disagree sharply.

Importing out-of-state tariff provisions and general interconnection operating practices pursuant to Condition 27 would serve to advance the Commission's procompetitive agenda. However, based on the available information, Staff cannot conclude the Commission intended that tariff provisions and operating practices from other SBC states (to the extent they do not appear in interconnection contracts) would be imported under Condition 27. Staff finds no support in the record of the merger proceeding for the CLEC position, nor does Staff agree with CLECs that references in the Order to "…UNEs, services, facilities, or interconnection arrangements/agreements.." indicate the Commission's intent that tariff provisions and operating practices not in interconnection agreements be imported under condition 27.[12]

The CLEC position would require the Commission to exclude interconnection provisions imposed through arbitration while permitting consideration of provisions imposed through other means. Tariff provisions can be and are imposed upon ILECs

[12] Staff understands that this language was contained in questions posed to the Joint Applicants by the Chairman, and subsequently was utilized in the Order. Thus, these references do not reveal intent that tariff provisions and general operating practices would fall under Condition 27.

such as SBC, and operating practices also may be imposed. It would be logically inconsistent to permit importation of one class of such imposed provisions while excluding others from consideration.

Staff notes that the FCC's SBC/Ameritech merger order limits CLEC ability to import out-of-state interconnection arrangements solely to negotiated provisions that appear in interconnection agreements. The FCC explicitly excluded terms, conditions and prices contained in tariffs. Of course, FCC determinations in this regard are in no way binding upon this Commission, or even suggestive. However, Staff has no reason to believe this Commission arrived at a different determination as a result of different considerations or circumstances.

SIXTH ISSUE

The Texas Proposed Interconnection Agreement: Should interconnection provisions contained in the Texas T2A document be eligible for importation into Illinois interconnection agreements?

Staff conclusion: No. T2A provisions should not be considered eligible for importation under Condition 27 of the Commission's order.

SBC / Ameritech Position:

According to SBC/Ameritech, the T2A was clearly a product of two arbitrations between SWBT and AT&T before the Texas Commission. It is, therefore, not available in Illinois because the terms of the T2A were not "voluntary negotiations" between SBC and CLECs. SBC/Ameritech points out that in testimony before the Commission, SBC representatives made it clear that the arrangements adopted during the Texas 271 proceeding did not fit the definition of freely negotiated voluntary agreements contemplated by Condition (27). Rather they were imposed as a condition necessary for SBC to obtain the Texas PUC's support of its plan for provision of in-region long distance services under Section 271 of the federal Telecommunications Act (See the Supplemental Direct Testimony on Re-Opening of Mr. Dysart).

CLEC Position:

The CLECs believe the plain language of the Illinois condition does not exempt T2A. Unlike the FCC, the CLECs reason, the ICC chose not to include language in its merger condition that specifically exempted the T2A. The CLECs believe that the generic language in merger condition (27) regarding "interconnection

arrangements/agreements" is sufficient to cover the availability of the T2A despite the fact that the Commission did not specifically rule on the availability of the T2A. If the plain language of the condition is unclear, the record does not support SBC's argument that the T2A should not be available.

In addition to their "plain language" argument, the CLECs advance an "irrational results" argument. The CLECs point to Merger Condition (#30) whereby the Commission ordered that SBC import to Illinois the 122 Texas performance measurements. The Texas performance measurements are part of the same collaborative process that produced the T2A and were also necessary for SBC to gain approval of the Texas PUC for its Section 271 Application. In short, SBC agreed to import into Illinois at least part of the T2A. It is, therefore, irrational to assume that parts of T2A can be imported but other parts should not be.

The CLECs further argue that despite the fact that the Commission was aware of Mr. Dysart's testimony at the time it issued its Merger Order, Conditions (27)(A) and (B) do not state that SBC/Ameritech is exempted from providing anything included in the Texas Agreement. More generally, Condition (27)(A) does not exempt SBC/Ameritech from providing those requests imposed upon or agreed to by SBC in return for approval of its plan to provide in-region long distance. The CLECs argue that since the provisions of the Texas Proposed Interconnection Agreement were not imposed upon SBC by arbitration, SBC/Ameritech is required to offer those provisions to CLECs in Illinois.

Thus, the CLECs contend that the plain language of Condition 27 does not exclude the Texas T2A from consideration. In the alternative, if the plain language of Condition 27 is unclear in this respect, they contend the record does not support SBC's argument that provisions of the T2A are not eligible for consideration under condition 27.

Staff Analysis:

The CLEC position relies in part upon their argument that Condition 27 excludes only interconnection provisions imposed on SBC through arbitration. Since they contend T2A was not imposed upon SBC, CLECs argue that T2A provisions must be eligible under Condition 27. Staff, however, rejects the underlying CLEC position that the only interconnection provisions excluded from consideration under Condition 27 are those imposed upon SBC through arbitration. Therefore, the fact that the T2A was not directly imposed as a result of arbitration is not dispositive, as the CLECs believe.

CLECs and SBC/Ameritech disagree concerning whether Texas T2A provisions were imposed upon SBC or were voluntarily agreed to by that company. Staff cannot agree with CLECs that SBC voluntarily entered into the Texas T2A in any sense reasonably comparable to the agreements negotiated between it and other carriers. SBC was required to provide interconnection arrangements contained in the T2A in

order to gain support of the Texas PUC for a Section 271 application to the FCC. The T2A was fashioned from an original arbitrated interconnection contract between SBC and AT&T in Texas, and was the product of additions and modifications to that underlying arbitrated contract. Those additions and modifications were required by the Texas PUC in return for its support of a Section 271 application before the FCC. In this regard, it is worth noting that the commitments contained in the T2A are conditional. These commitments would not be available absent the Texas PUC's support of SBC's application to offer in-region long distance service.

Staff sees nothing in the record of the merger proceeding to refute SBC/Ameritech's contention that it never intended to make the T2A available to CLECs in Illinois. Neither does that record support the view that the Commission considered the T2A to be a voluntary agreement and intended that it be eligible for importation pursuant to Condition 27. Staff does not believe an explicit exclusion of T2A from eligibility under Condition 27 is necessary to arrive at this conclusion.

Finally, Staff takes note of the merger conditions imposed on SBC/Ameritech by the FCC. The FCC recognized the T2A as a non-voluntary commitment, and excludes the T2A from consideration for importation between states. Paragraph 43 of Condition XII of the FCC Merger Order provides in relevant part that:

> "……. terms made available in Texas through SWBT's Proposed Interconnection Agreement ("PIA") (filed with the Texas PUC on May 13, 1999) would not be available under this Paragraph." [13]

FCC determinations in this regard clearly are not binding in any respect upon the Illinois Commerce Commission; indeed, the FCC's merger order was issued after this Commission's September 23, 1999 Merger Order. However, Staff's examination has revealed nothing to indicate that the Illinois Commerce Commission's assessment of the Texas T2A agreement differed significantly from that of the FCC.

[13] Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-141, Memorandum opinion and Order, Attachment C (Conditions) at para. 43 (1999)(SBC/Ameritech Order).

INTERCONNECTION REQUESTS SUBMITTED BY CLECS

This section sets forth Staff's analysis of the individual interconnection provisions requested by CLECs during the collaborative. CLECs requested thirty-seven (37) separate items during the collaborative. These are displayed in Appendix 4, which presents the following basic information (where applicable) for each requested item:

- The state in which the requested item currently is provided
- The proceeding or docket number in that state (if applicable)
- The identity of the CLEC receiving the provision in that state
- The location of the requested item in an interconnection agreement (or other document)
- The date the requested provision was approved by a state commission
- The requesting CLEC's summary description of the item
- The identity of the requesting CLEC
- Ameritech's position on each of the following: Is it from a negotiated agreement? Is it technically feasible to provide? Is it lawful to provide? Is it consistent with Illinois policy?
- Summary comments of Ameritech and the requesting CLEC

Ameritech raises no objections to providing items 1 through 8. Consistent with the preceding discussions, Staff believes tariffs for each of these items should be timely filed by SBC/Ameritech, and that the interconnection agreements of the requesting CLECs should be amended promptly to incorporate provision of the requested items.

Ameritech raises various objections to the remaining 29 items listed in Appendix 4, and declines to provide these items pursuant to Condition 27. The merits of Ameritech's objections are analyzed here, and Staff presents its position concerning whether Ameritech should provide any of the declined interconnection provisions. In a number of instances where SBC/Ameritech declines to provide a requested item, it acknowledges that the requested provision could be incorporated into CLEC contracts upon negotiation of suitable language changes or other modifications. Staff encourages CLECs to pursue such negotiations, and expects any such negotiations should be quick and fruitful.

Item 9 is a request for unbundled interoffice transport, objected to by SBC/Ameritech as being both unlawful and inconsistent with the Commission's policy in Illinois. Staff takes no position here on SBC/Ameritech's assertion that the underlying contract language at issue is inconsistent with requirements of the FCC's "UNE Remand" Order. Staff agrees with SBC/Ameritech that the requested provision appears to be

inconsistent with “shared transport” as specified in Condition 28 of the Commission’s Merger Order. Accordingly, Staff believes SBC/Ameritech appropriately may decline this request.

Requests 10 and 11 relate to provisions of a UNE platform offering. SBC/Ameritech declines to provide Item 10 on the grounds that the underlying contract language is unlawful – specifically, that this language is inconsistent with requirements of the FCC’s “UNE Remand” Order. Staff takes no position here on the merits of this objection. The involved parties will need to consult with the Commission’s Office of General Counsel for further guidance. SBC/Ameritech declines to provide item 11 on the grounds that it is inconsistent with Commission policy regarding “shared transport”, as embodied in Condition 28 of the Merger Order. Staff concurs, and finds that SBC/Ameritech may decline to provide this item pursuant to this collaborative.

Item 12 is a request to import an entire interconnection contract that is currently in force in the state of California. SBC/Ameritech objects to importation of the contract on the grounds that various of its multiple provisions present problems and issues of technical feasibility, lawfulness and consistency with Commission policy in Illinois. Staff examination of individual provisions of the contract has revealed that specific provisions do present problems at least in the areas of technical feasibility and consistency with Commission policy. Accordingly, SBC/Ameritech appropriately may decline to import the entire contract under Condition 27.

Requests 13 through 20 pertain to collocation issues and the UNE Platform. SBC/Ameritech declines to provide these items pursuant to Condition 27 on the grounds they originate from an arbitration award. Consistent with preceding discussion, provisions imposed through arbitration are not eligible for consideration under Condition 27. Accordingly, Staff finds that SBC/Ameritech may decline to provide these items in this collaborative.

Items 21 and 22 relate to collocation issues, and have been taken from collocation services and practices handbooks. SBC/Ameritech declines to provide these items pursuant to the Condition 27, as they are not negotiated contract provisions. For reasons set forth above, Staff finds this to be acceptable grounds for denial of these requests.

Requests 23 through 26 are taken from sources such as handbooks and websites and set forth various operating practices and procedures for cooperative testing, re-use of facilities, and procedures for coordinating “hot cuts” of unbundled local loops. SBC/Ameritech declined to provide these items pursuant to the collaborative based on the fact that these are not provisions existing in negotiated interconnection contracts or agreements. Consistent with prior discussion, Staff fins these to be acceptable grounds for denial of these requests.

Item 27 is a request for collocation provisions contained in out-of-state tariffs.

SBC/Ameritech declined to honor this request based on the fact that these provisions do not reside in an interconnection agreement or contract. Consistent with preceding discussion, Staff finds SBC/Ameritech may decline to import, pursuant to condition 27, items offered through tariff rather than negotiated agreement.

Items 28 through 32 are collocation related requests that are from the Texas T2A document and/or tariffs. SBC/Ameritech has declined to provide these items due to the fact that the provisions exist in the Texas T2A document or tariffs. For the reasons set forth above, Staff finds this to be acceptable grounds for denial. However, Staff notes SBC/Ameritech's stated willingness to negotiate these provisions for incorporation into an interconnection agreement and expects that such negotiations should not entail a lengthy process for any CLEC requesting these items.

Item 33 is a request for provision of so-called "dark fiber", based on the FCC "UNE Remand" Order in CC Docket No. 96-98 (released November 5, 1999). SBC/Ameritech objects to the request on the grounds that it is not in a negotiated agreement or contract. Staff finds this is a valid reason for denial of this request. Staff notes, however, that Ameritech has filed tariffs for provision of "dark fiber" pursuant to the FCC "UNE Remand" Order and has acknowledged its obligation to negotiate the terms of availability of the network element for incorporation into interconnection agreements.

Requests 34 through 37 involve various provisions that originate in the Texas T2A document and/or tariffs. SBC/Ameritech declines to provide these items based on their origin in the T2A document and tariffs. For the reasons set forth in the preceding section of this report, Staff finds this to be acceptable grounds for denial of these CLEC requests.

APPENDIX 1
TEXT OF CONDITION 27

27) Interconnection - Ameritech Illinois will provide interconnection in accordance with the following interconnection commitments. Such interconnection provisions shall be available for an indefinite time in Illinois.:

Interconnection Condition A

A. SBC through its subsidiary, Ameritech Illinois, shall provide to CLECs in Illinois those services, facilities or interconnection agreements /arrangements offered by SBC ILEC affiliates in their in-region states subject to the following exceptions and conditions:

- SBC and or any SBC subsidiary affiliate in Illinois shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements which have been imposed upon SBC by another state as a result of an arbitration (as opposed to a voluntary agreement);

- SBC through its subsidiary, Ameritech Illinois, shall be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements, unless it demonstrates by a preponderance of the evidence that they are technically infeasible or unlawful or contrary to Illinois policy;

- SBC through its subsidiary, Ameritech Illinois, shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements at the same rates or prices as SBC makes such offerings in SBC in-region territories on a permanent basis since costs may and do vary by state, and pricing in each state reflects state pricing policies and costs. However, Ameritech Illinois should not be permitted to delay implementation of any interconnection provision on the basis of pricing. Accordingly, the Commission further orders the Joint Applicants to import the rates agreed to in the relevant state in which the imported interconnection agreement was originally reached, until such time as Illinois-specific rates can be determined. At such time, the interim rates would be subject to a true-up.

  The Commission finds this condition to be valuable to CLECs and the

expansion of the competitive market in Illinois, particularly since Section 252(i) of TA 96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states. This is especially so where Ameritech Illinois is not a "party" to interconnection agreements in other SBC states.

In relation to these interconnection commitments, Joint Applicants shall make available the following optional payment plan for non-recurring charges:

> As an incentive for local residential telephone competition, SBC through its subsidiary, Ameritech Illinois, will offer a promotional 18-month installment payment option to CLECs for the payment of non-recurring charges associated with the purchase of unbundled network elements used in the provision of residential services and the resale of services used in the provision of residential services. This promotional 18-month installment option will begin on the date 30 days following the Commission's entry of a final appealable order approving the Merger and will terminate 3 years following the Merger Closing Date. No interest will be assessed on the remaining balance during the 18-month period as long as the CLEC continues to purchase the residential unbundled network element or residential resold service. In the event the CLEC does not purchase the residential unbundled network element or residential resold service for the entire 18 month payment period, any remaining non-recurring charge balance shall immediately be due and payable when the service is terminated. Unless an interconnection agreement by its terms specifies otherwise, interest at a rate of 8% per annum will be assessed on any amounts that become immediately due and payable and are not paid within 30 days of same. If a CLEC disputes its obligation to make payment when due, it will place the amount due in an escrow account earning a rate of at least 8% interest, pending a final resolution of the dispute.
>
> As an additional incentive for local residential telephone competition, SBC through its subsidiary, Ameritech Illinois, agrees to waive the Bona Fide Request ("BFR") initial processing fee associated with a BFR submitted by a CLEC for service to residential customers under the

following condition: the CLEC submitting the BFR must have, for the majority of the BFR requests it has submitted to Ameritech Illinois during the preceding 12 months, completed the BFR process, including the payment of any amounts due. The BFR initial processing fee will be waived for a CLEC's first BFR following the Merger Closing Date and for a CLEC that has not submitted a BFR during the preceding 12 months. This BFR fee waiver will be offered for a period of 3 years following the Merger Closing Date.

While the process for negotiating and incorporating proposed changes to interconnection agreements resulting from Condition A will be dictated by the normal Section 252 negotiation / arbitration process, Ameritech Illinois shall begin reviewing such proposed changes within 30 days of the Merger Closing Date.

Interconnection Conditions B and C

B. In order to coordinate and facilitate matters regarding implementation of these interconnection conditions, no later than 60 days after the Merger Closing Date, Joint Applicants shall convene a workshop or collaborative process with Staff and CLECs to discuss the UNEs, services, facilities or interconnection agreements (and their interim prices) which are now being provided by an SBC ILEC affiliate (in region) and have been made available to CLECs in SBC's in-region states and which are not currently available and desired by CLECs in Illinois. This workshop shall conclude its work within 60 days.

The Commission Staff shall take a primary role as a facilitator. Within 90 days of the initiation of this workshop, Staff shall produce a report summarizing the interconnection terms and conditions that will be made available and the interconnection arrangements that CLECs desired. Of the arrangements desired by CLECs, Staff will summarize those that Ameritech Illinois agreed to and that Ameritech Illinois objected to on the basis of technical infeasibility, or as unlawful or contrary to Illinois policy. Where Ameritech Illinois raised objections based on the above criteria of technical infeasibility or unlawful or contrary to Illinois policy, Staff shall state its position on the merits of Ameritech Illinois' objections. Aside from these criteria, Ameritech Illinois shall have no basis for objecting to the adoption of such negotiated interconnection agreements.

Condition B and this workshop process are ancillary to Condition A. Should any disagreement arise as to whether an interconnection arrangement requested of Ameritech Illinois is subject to the exemptions

under Condition A of technical infeasibility or unlawful or contrary to Illinois policy, the Commission expects that any parties negotiating for interconnection terms under Condition A shall make use of the Staff's report in those negotiations. While not limiting in any way participation in such process by the Commission or individual Commissioners, the Commission will not take an active role until its participation is formally requested. At such time, the Commission shall then render a decision, based upon a preponderance of the evidence, that the interconnection agreements at issue are technically infeasible or unlawful or contrary to Illinois policy.

C. Joint Applicants shall provide ~~copies~~ the following information regarding all interconnection agreements from other states to the Commission prior to the Merger Closing Date:

1. all agreements listed by state;
2. docket number associated with each agreement;
3. date of approval;
4. parties to the agreement;
5. where the agreement can be obtained including a contact telephone number and a relevant internet address; and
6. an attestation by the SBC/Ameritech corporate compliance officer referenced in Section IV of this Order that such information is true and correct.

Such condition, excepting the requirement of timing, will also include any subsequent interconnection agreements entered into by an SBC ILEC affiliate entered into after the date of the merger closing, as well as agreements entered into by an SBC CLEC competing out of region. For interconnection agreements entered into after the date of the merger closing (in region or out of region), SBC should provide the relevant information referenced above regarding such interconnection agreements to the Commission within 15 days of entering into such agreements. The Joint Applicants will make such agreements available for inspection to any requesting Illinois CLEC, either electronically or in a hard copy format.

This condition will make information available that may be useful to the Commission and its Staff during the collaborative process and/or thereafter to monitor Joint Applicants' continued compliance with the condition of offering agreements from other states in Illinois.

Interconnection Condition D

D. If a CLEC affiliate of SBC/Ameritech obtains a UNE or interconnection

arrangement from an incumbent LEC through negotiation of that arrangement or through arbitration initiated by the SBC/Ameritech CLEC under 47 U.S.C. § 252, then Ameritech Illinois shall make available to requesting CLECs in Illinois, though good-faith negotiation, the same UNE or interconnection arrangement on the same terms (exclusive of price). Ameritech Illinois shall be obligated to provide such UNE or interconnection arrangement(s) where it is technically feasible to do so on or in the network of Ameritech Illinois and subject to the unbundling limitations of 47 U.S.C. § 251(d)(2).

The determination of whether a UNE or interconnection arrangement is technically feasible shall follow 47 CFR § 51.5.

The price(s) for such UNEs or interconnection arrangements shall be negotiated on a state-specific basis and, if such negotiations do not result in agreement, Ameritech Illinois shall submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Section, to this Commission for resolution under 47 U.S.C. § 252.

Appendix 2

LIST OF PARTICIPANTS
SBC/AMERITECH INTERCONNECTION COLLABORATIVE

ALLEGIANCE TELECOM

Bob Buerrosse
Robert Kelly

AT&T

John Gomoll
Cheryl Hamill
Jay Reidy
James Webber
Charlene Kordus
Joanne Samonek
Bruce Bennett
Scott Finney
Becky Vanderpol
Patricia Coughlan
Dan Noorani
Robert Pedigo
Scott Finney
Mike Sawyer
Rich Brauchle
Karen Moore
Julie Chambers
Nancy Dalton
Tim Connolly

AMERITECH

Dan J. Kocher
Greg D'Anna
Dana Wiewel

AMERIVOICE TELECOMMUNICATIONS, INC.

Michael D. Pulito
Louis Miller

AVENEW

Doug Jensen

CELLULAR ONE CHICAGO

Pete Long

CIMCO COMMUNICAITONS, INC.

Bill Dvorak

COMPETIVE STRATEGIES GROUP, INC.

Bob Lock

CORECOMM

Thomas J. O'Brien

COVAD COMMUNICATION COMPANY

Felicia Franco-Feinberg

DATA NET SYSTEMS

Michael W. Ward

FOCAL COMMUNICATIONS

Daniel Meldazis
Jane Van Duzer

GTE

Karen Boswell

GTE COMMUNICATIONS CORP.

Suzy Bennett
Dale Titel
Irene Jones
Gary Carpenter

HINSHAW & CULBERTSON (FOR GTE)

Rendi Mann-Stadt

ICG COMMUNICATIONS

Adrienne Leonard
Bruce Holdridge
Gwen Rowling

ILLINOIS COMMERCE COMMERCE

Jeff Hoagg
Tom G. Aridas

KERN & ASSOCIATES, INC.

John P. Kern

MCG COMMUNICATIONS

James Hurley
Richard Go

MCI WORLDCOM

Michael L. Hussey
Darrell Townsley
David McGann
Kathy Jespersen
Dennis Wall
Marilyn Haroutunian

MCLEODUSA INCORPORATED

Diane M. Bowers
Stacey Stewart
Bill Haas
Kenneth A. Kirley
John McCluskey

MEYER, CAPEL

Joseph Murphy

MIDWESTERN TELECOM

Jeannette Golden
Jerry Holt

NEXTLINK ILLINOIS, INC.

Jim Kruse
Brian Rankin

OKEEFE, ASHENDINE, LYONS & WARD

John F. Ward Jr.
Hank Kelley

POWER COMMUNICATIONS

Jeff Slater

RHYTHMS

Craig Brown
Joan Volz
Jo Gentry

ROWLAND & MOORE

Thomas Rowland

SPRINT

Cathy Jenkins
Ken Schifman
Betty L. Reeves
Jim Severance

TELIGENT, INC.

Victoria Schlesinger

TIME WARNER

Marcia Schermer

US XCHANGE

Mary Whiting
David Easter

21ST CENTURY TELECOM

Kristen Smoot

APPENDIX 3

ICC Interconnection Collaborative
Procedural/Process Issues

ISSUE NUMBER ONE

Procedure for Adopting "Approved" Interconnection Agreements/Arrangements. Once the collaborative process concludes, Ameritech should be required to offer by tariff to CLECs in Illinois those services, facilities or interconnection agreements/arrangements that are "approved" in the collaborative process. In the alternative, the Commission should adopt some other method for allowing CLECs to adopt these provisions in an expeditious manner. Requiring CLECs to negotiate with Ameritech for these terms after the collaborative process, and then to obtain Commission approval to revise the interconnection agreement, will serve no useful purpose and will significantly delay the pro-competitive effects of this merger condition. Moreover the Commission's order appears to contemplate "automatic adoption." See Order, Condition (27)(A), at 251 ("The Commission finds this condition to be valuable to CLECs and the expansion of the competitive market in Illinois, particularly since Section 252(i) of TA 96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states.")

SBC/AMERITECH RESPONSE

The Commission does have an expedited process for reviewing and approving interconnection agreements under Section 252(i) of TA96. Many Carriers have used that approach rather than electing to undertake a "fresh start" negotiation.

SBC/Ameritech feels that this particular request is outside the scope established by the Commission for the collaborative process. The Commission recognized that the primary process for implementing condition 27 was the "negotiation/arbitration" process. In particular, the closing paragraph of Condition (27) (A) states

> While the process for negotiating and incorporating proposed changes to interconnection agreements resulting from Condition A will be dictated by the normal Section 252 negotiation / arbitration process, Ameritech Illinois shall begin reviewing such proposed changes within 30 days of the Merger Closing Date. The tariffing process proposed by MCI and others is not a negotiation. Further evidence in support of this position is found in the closing paragraph of Conditions (27) (B) which explains that:

> Condition B and this workshop process are ancillary to Condition A. Should any disagreement arise as to whether an interconnection arrangement requested of Ameritech Illinois is subject to the exemptions under Condition A of technical infeasibility or unlawful or contrary to Illinois policy, the Commission expects that any parties negotiating for interconnection terms under Condition A shall make use of the Staff's report **in those negotiations**. [emphasis added]

CLEC REPLY

For Condition 27(A) to be "valuable to CLECs and the expansion of the competitive market in Illinois" as contemplated by the Commission in its merger order, it is extremely important that the Commission require SBC/Ameritech to offer by tariff to CLECs in Illinois those services, facilities and interconnection agreements/arrangements that are "approved" in the collaborative process. In the alternative, as we have stated earlier, the Commission should adopt some other method for allowing CLECs to adopt these provisions in an expeditious manner.

SBC/Ameritech's statement that the tariffing requirement is inapplicable or somehow outside the scope of this collaborative process is incorrect. SBC/Ameritech is required by law to tariff all services, facilities, interconnection arrangements and agreements it is required to provide as a result of this collaborative process. Specifically, Section 13-501 of the Illinois Public Utilities Act ("PUA") requires SBC/Ameritech to tariff all telecommunications services it provides. There is no exception here. In fact, as discussed more fully in Issue Eight below, SBC/Ameritech acknowledges its obligation to tariff its interconnection services, facilities and arrangements, thereby making them generally available to all CLECs, irrespective of whether a particular CLEC has an interconnection agreement with SBC/Ameritech. For example, SBC/Ameritech has filed its resale tariff, its UNE tariff, its IST-ULS tariff and its collocation tariff (which was recently suspended by the Commission). Moreover, tariffing will not only enable all CLECs to obtain the desired services, facilities and interconnection arrangements in an expeditious manner, but would also allow CLECs who do not currently have interconnection agreements with SBC/Ameritech to reap the pro-competitive benefits the Commission set out to achieve via this process. Tariffing also has the added benefit of helping to assure that all CLECs are treated in a nondiscriminatory fashion.

The CLECs do not disagree that SBC/Ameritech accurately quotes various language from Conditions (27)(A) and (B) from the Commission's merger order. This language, however, applies in those instances where CLECs desire to have various services, facilities or arrangements imported into their agreements from another state. There is no hint by the Commission that the referenced negotiation/arbitration shall be the only way or the exclusive way of obtaining such services, facilities or arrangements. As discussed more fully in Issue Eight below, SBC/Ameritech's tariffs, including its UNE, ULS-IST and collocation (once it is reinstated after investigation) tariffs, are

generally available to all requesting CLECs for the purpose of interconnecting with SBC/Ameritech, including those CLECs without existing interconnection agreements. In short, SBC/Ameritech is required by the PUA to tariff the results of this process, and the Commission's merger order does not relieve SBC/Ameritech of its tariffing obligations.

Contrary to SBC/Ameritech's representations, the Commission does not have an "expedited process" for reviewing and approving interconnection agreements under Section 252(i) of TA96. In fact, some CLECs have had an extraordinarily difficult time "opting in" to another CLEC's interconnection agreement in Illinois.

QST's saga, for example, began on May 21, 1998, when it notified Ameritech that it wished to exercise its rights under Section 252(i) to adopt the agreement between Ameritech and MCI dated May 5, 1997 and approved by the Commission in Docket No. 97-AA-002. Initially, Ameritech forwarded an agreement identical to the MCI Agreement to QST for approval and acceptance. QST signed the interconnection agreement forwarded by Ameritech and sent it back to Ameritech for Ameritech's signature.

On July 21, 1998, the Federal District Court of the Northern District of Illinois affirmed the Commission's decision in ICC Docket No. 97-0404, 97-0519, 97-0525 (Consol., March 11, 1998) that the agreements between Ameritech and several CLECs (MCI, TCG, and WorldCom) require the payment of reciprocal compensation for calls terminated with Internet service providers ("ISPs"). Shortly after the issuance of the court's decision and after Ameritech's receipt of the signed QST agreement, Ameritech notified counsel for QST that the MCI agreement as it was signed by Ameritech and MCI and approved by this Commission was no longer available. Instead, Ameritech insisted that QST allow Ameritech to modify the MCI agreement with an amendment precluding reciprocal compensation for calls terminated with ISPs.

On August 24, 1998, QST Communications, Inc. filed a verified complaint with the Commission alleging that Ameritech had violated state and federal law by refusing to allow QST to opt into MCI's agreement. On August 26, 1998, the Hearing Examiner granted QST's request for emergency relief and ordered Ameritech to execute the interconnection agreement.

On November 5, 1998, the Commission found that Ameritech Illinois had violated Section 252(i) of the Federal Act and Sections 13-514(1) and (6) of the Illinois Public Utilities Act by failing to allow QST to adopt the MCI/Ameritech agreement in its entirety, and ordered Ameritech Illinois and QST to file with the Commission for its approval under Section 252(e) of the Federal Act the interconnection agreement that had been executed by both parties, pursuant to the Commission order dated August 26, 1998. The Commission eventually approved the agreement on February 18, 1999, nine months after QST first told Ameritech that it wanted to avail itself of the opt in provisions of Section 252(i).

Because the Commission has no procedures in place for approval of a 252(i) adoption, it has treated such requests as "negotiated" agreements for approval purposes and applied the process for approval of negotiated agreements found in Part 763 of the Illinois Administrative Code. The problem with treating a 252(i) adoption as a negotiated agreement is painfully apparent from QST's attempt to opt into MCI's existing agreement and highlights how that process is subject to abuse and delay.

Moreover, the fact that the Commission's rules for approval of negotiated agreements require a joint filing by both parties highlights another problem with the lack of an expedited opt in process. MCI WorldCom recently attempted to opt into another agreement in Illinois and Ameritech refused to jointly file the agreement. Absent an agreement to jointly file, MCI WorldCom was forced to file on its own a notice of adoption with the Commission's Clerk's office. The Clerk's office returned MCI WorldCom's notice of adoption without accepting it for filing. As a result of Ameritech's refusal to jointly file and allow for the expedited adoption of contracts, MCI WorldCom and Ameritech are now engaged in litigation before the FCC. See MCI WorldCom v. Illinois Bell Telephone Company, et al., File No. E-99-23, filed July 2, 1999.

Even under the most favorable circumstances, under the Commission's current approach, a CLEC has no assurance that a provision(s) it desires to import from an SBC interconnection agreement in another state will be approved in less than 90 days. Thus, if the Commission agrees with SBC/Ameritech and refuses to impose a tariff requirement, it is extremely important that the Commission adopt a process for allowing CLECs to adopt these provisions in an expeditious manner.

It is clear from the Commission's language in the merger order that some sort of "automatic adoption" process should be implemented, and that such a process is not outside the scope of this collaborative process. *See Order, Condition (27)A at 251.* Such a procedure would be consistent with the FCC's rules implementing TA96, which provide that a state commission should have an expedited process in place for approving interconnection agreements pursuant to Section 252(i). *See FCC First Report and Order on Local Competition, CC Docket 96-98, ¶1321; In the matter of Global Naps., CC Docket 99-154, ¶ 4 and footnote 13. (states may adopt "procedures for making agreements available to requesting carriers on an expedited basis.")* While SBC/Ameritech is correct that the Commission's language in Condition 27(A) does refer to the use of a negotiation/arbitration process for incorporating proposed changes to interconnection agreements in Condition 27(A), nowhere does the Commission preclude an expedited process. As mentioned earlier, the Commission expressly states that the process to be used is akin to one of "automatic adoption."

The Indiana Utility Regulatory Commission ("IURC") has adopted an expedited process for approving interconnection agreements pursuant to 252(i) that the Commission may want to explore. On December 9, 1999, the IURC issued guidelines for 252(i) adoptions. Under those guidelines, a carrier may file a request for adoption

of a previously approved interconnection agreement by submitting a signed letter setting forth the adoption of the prior agreement. The agreement itself need not be filed. The letter must describe any changes to the original agreement made by the requesting carrier, although those changes may not modify the substance of the original agreement.

Within twenty days following the filing, comments may be submitted by either: (i) the Office of the Utility Consumer Counselor, or (ii) a telecommunications carrier not a party to the Agreement. While the guidelines themselves do not so provide, as a matter of practice, the IURC will issue an order approving or rejecting the adoption within 30 days of the initial request.

ISSUE NUMBER TWO

Interconnection Terms in Tariffs, General Operating Practices, and the Texas Proposed Interconnection Agreement. Ameritech should be required to offer to CLECs in Illinois those services, facilities and interconnection arrangements that are found in SBC's in-region state tariffs, including but not limited to, its general operating practices (such as the California coordinated processes for hot cuts), and the Texas Proposed Interconnection Agreement. The requirements of Condition A, **[apply]** ***not only to existing interconnection agreements but also to services, facilities or interconnection arrangements that are offered by SBC in its in-region states, as long as those terms are not imposed on SBC through arbitration. Since these provisions, general operating practices, and the Texas agreements are not imposed on SBC as a result of an arbitration, they clearly fall within the language of Condition A. Such a result will also serve the Commission's policy goal of promoting the expansion of competition in Illinois.***

SBC/AMERITECH RESPONSE

In testimony before the Commission, SBC representatives made it clear that the arrangements adopted during the Texas 271 proceeding did not fit the definition of freely negotiated voluntary agreements contemplated by Condition (27). Rather they were imposed as a condition necessary for SBC to obtain the Texas PUC's support of its plan for provision of in-region long distance services under Section 271 of the federal Telecommunications Act (See the Supplemental Direct Testimony on Re-Opening of Mr. Dysart). Tariffs and operating practices not part of existing interconnection agreements are also outside the scope of the collaborative.

CLEC RESPONSE

SBC/Ameritech frequently uses the term "freely negotiated" voluntary agreements to describe the services, facilities, and arrangements it is required to provide to requesting CLECs. "Freely negotiated" is not the standard, however, as Condition (27)(A) of the Commission's merger order makes very clear. The only UNEs, services, facilities or interconnection agreements/arrangements SBC/Ameritech is not required to offer are those "UNEs, services, facilities or interconnection agreements/arrangements which have been imposed by SBC by another state as a result of an arbitration." Thus, the only exception to SBC/Ameritech's duty to provide requested services, facilities, arrangements and agreements is if that request was imposed on SBC by arbitration. If the requested services, facilities, arrangements and agreements were not imposed on SBC by arbitration, SBC/Ameritech is required to provide them.

No party, not even SBC/Ameritech, takes the position that the Texas Proposed Interconnection Agreement was imposed upon SBC by [Texas] as a result of arbitration. In fact, as SBC/Ameritech concedes in its written response and as Mr. Dysart testified in ICC Docket No. 98-0555 on Reopening, the Texas Agreement was not imposed upon SBC by arbitration, but was instead agreed to by SBC in a Section 271 proceeding in return for the Texas PUC's support of SBC's plan to offer in-region long distance service under Section 271 of TA96.

Moreover, despite the fact that the Commission was aware of Mr. Dysart's testimony at the time it issued the merger order, Conditions (27)(A) and (B) do not state that SBC/Ameritech is, in accordance, with Mr. Dysart's testimony, somehow exempted from providing anything included in the Texas Agreement. In addition, Condition (27)(A) does not exempt SBC/Ameritech from providing those requests imposed upon or agreed to by SBC in return for approval of its plan to provide in-region long distance. Therefore, because the provisions of the Texas Proposed Interconnection Agreement were not imposed upon SBC by arbitration, SBC/Ameritech is required to offer those provisions to CLECs in Illinois.

SBC/Ameritech also states that tariffs and operating practices not part of existing interconnection agreements are outside the scope of the collaborative. The tariffing issues have already been discussed in Issue One above, and are further discussed in Issue Eight below. As far as operating practices are concerned, as mentioned above, as long as the operating practices were not imposed upon SBC by arbitration, SBC/Ameritech is required by the Commission's merger order to make them available to CLECs in Illinois. It is not necessary that those operating practices be included in an SBC ILEC affiliate interconnection agreement before it falls within the scope of this collaborative process. Condition (27)(A) requires SBC/Ameritech to provide all UNEs, services, facilities and interconnection agreements and arrangements not imposed upon SBC by arbitration. While they can be, there is no requirement that those UNEs, services, facilities or arrangements be included in an interconnection agreement.

Therefore, operating practices not imposed upon SBC by arbitration— whether or not they are included or otherwise referenced or incorporated into an interconnection agreement— are properly included in this collaborative process, and SBC/Ameritech is required by the Commission's merger order to provide them to requesting CLECs.

ISSUE NUMBER THREE

Definition of "Negotiated Interconnection Agreement." Ameritech should be required to offer to CLECs in Illinois all services, facilities or interconnection arrangements, including those that were obtained pursuant to a contractual MFN clause or Section 251(i) of TA 96.

SBC/AMERITECH RESPONSE

As long as the underlying contract condition obtained from SBC under another state's MFN clause or under Section 252(i) were freely negotiated in that state, there is no reason it should be excluded from the list of desired contract provisions being generated by the collaborative process.

CLEC REPLY

While the CLECs agree that SBC/Ameritech is required to import provisions obtained in other states pursuant to a contractual MFN clause or Section 252(i) of TA96, they do not agree, as discussed in Issue Two above, that "freely negotiated in that state" is the correct standard. Rather, the correct standard is "not imposed by arbitration." In addition, SBC/Ameritech's response seems to indicate that the requested service, facility or arrangement must be a contract condition. As also discussed in Issue Two above, SBC/Ameritech is required to provide all UNEs, services, facilities and interconnection arrangements and agreements not imposed upon SBC by arbitration, whether or not they are included in an interconnection agreement.

ISSUE NUMBER FOUR

Negotiated Terms in Arbitrated Interconnection Agreements. Ameritech is required to offer to CLECs in Illinois all negotiated terms (i.e., services, facilities and interconnection arrangements) in arbitrated interconnection agreements, subject to technical feasibility considerations.

SBC/AMERITECH RESPONSE

SBC/Ameritech has no objection to including a voluntarily negotiated provision of a contract which went through the arbitration process so long as that provision was not related to arbitrated issues. Such a provision could be included in the list of desired contract provisions being generated.

CLEC REPLY

SBC/Ameritech's response that it has no objection importing a voluntarily negotiated provision if the provision "was not related to arbitration" is not an accurate description of the standard to be applied. As we have stated previously, the standard that applies is that the provision was not imposed upon SBC by another state as a result of arbitration. SBC/Ameritech's limitation—"so long as that provision is not related to arbitration"— potentially allows SBC/Ameritech to state that while a particular provision may not have been arbitrated itself, it is related to one that was and therefore cannot be imported. The Commission's merger order does not allow for such a limitation.

ISSUE NUMBER FIVE

Effective Date of Negotiated Agreements. Condition A applies to all non-expired interconnection agreements in SBC's in-region states, including those that SBC does not intend to renew.

SBC/AMERITECH RESPONSE

Non-expired provisions could be included in the list of desired provisions generated by the collaborative process, that is at the time of the collaborative the provision could be technically feasible, lawful and consistent with Illinois policy. However, the ability to include such a provision in subsequent negotiations could be impacted by the expiration date or the fact that the contract is no longer effective at the time the negotiation takes place. SBC/Ameritech believes that during negotiations it would be improper for a carrier to claim they can adopt expired or terminated provisions.

CLEC REPLY

SBC/Ameritech's response implies limitations and restrictions that simply do not appear in the Commission's merger order. The order is clear that "interconnection provisions shall be available for an indefinite time in Illinois." *See order, Condition 27, at page 250.*

SBC/Ameritech's position that the imported provisions expire at the same time the SBC agreement they were imported from expires has no basis or support in the Commission's merger order. Rather, it is a condition being unilaterally imposed by SBC/Ameritech to hamper the pro-competitive results the Commission intended this collaborative process to produce. Moreover, to adopt SBC/Ameritech's position would create mass confusion and administrative havoc because Illinois CLECs would then presumably have interconnection agreements containing numerous expiration dates. Not only does this constitute bad policy, but what happens when the first expiration

date is reached? Do the parties engage in "partial" negotiations and arbitration, negotiating some provisions now and more when the next expiration date arrives, and the next?

The same holds true with regard to the comments made by SBC/Ameritech at the December 8, 1999 collaborative meeting suggesting that CLECs may not be entitled to import provisions from SBC agreements that have not yet expired but may be about to expire. The merger order does not grant SBC/Ameritech the right to refuse CLEC requests based on the fact that an SBC agreement is "about to expire" in a certain period of time. Nor does it give SBC/Ameritech the broad discretion and flexibility to determine that there is not enough time left in the SBC agreement the provision is being imported from and to deny the request on that basis. The Commission should note that if SBC/Ameritech's position prevails in reply to this Issue and to Issue One, SBC/Ameritech will effectively be able to exclude nearly all agreements, thus rendering Condition 27(A) useless.

In the alternative, if the Commission decides to depart from its position in the merger order that interconnection provisions should be available for an indefinite time in Illinois, then as long as an interconnection agreement in one of SBC's in-region states has not expired, the Commission should allow a CLEC to import provisions from that agreement into its own agreement, and those imported provisions should only expire when the rest of the Illinois CLEC's agreement expires.

ISSUE NUMBER SIX

Posting of Agreements. Ameritech should be required to post all relevant interconnection agreements on its Web site and a process should be established whereby Illinois CLECs can quickly ascertain whether SBC/Ameritech has voluntarily agreed to a term or condition of interconnection, or whether, according to SBC/Ameritech, that term or condition was imposed upon it as a result of arbitration. [During the conference call on November 11, Ameritech acknowledged that its current process is not capable of provide this information in a timely access to the numerous interested parties in the collaborative process.]

SBC/AMERITECH RESPONSE

The normal process for obtaining copies of contracts was discussed at the November 18, 1999 collaborative meeting and is included in the material posted on the ICC's web site. In order to facilitate the collaborative, on November 23rd, SBC/Ameritech provided a mass mailing of over 40 contracts and amendments to all persons on the e-mail distribution list established as part of the collaborative. The determination of whether or not a specific contract provision was arbitrated will be made when a candidate provisions has been submitted.

CLEC REPLY

The CLECs have no additional comment on this issue.

ISSUE NUMBER SEVEN

To streamline the process, Ameritech should agree that provisions opted into by CLECs should become effective immediately, irrespective of any ICC approval process for negotiated contracts. Without this, CLECs could be waiting months for ICC approval and be denied the benefits of the new provisions.

SBC/AMERITECH RESPONSE

TA96 and the Commission's Rules specify the process for the negotiation and approval of contracts. Our understanding is that carriers may not effectuate a 251 Agreement before approval by the Commission. In any case, we believe the question is outside the scope of the collaborative.

CLEC REPLY

The CLECs refer SBC/Ameritech and the Commission to their response to Issue One. In addition, the CLECs again reiterate the fact that the Commission expressly indicated a desire to have an approval process which is akin to "automatic adoption" (s*ee Condition (27)(A) at 251)* rather than a lengthy approval process*.*

ISSUE NUMBER EIGHT

We must ensure that CLECs that do not have interconnection agreements with SBC/Ameritech benefit from the Merger Order's requirement that SBC/Ameritech provide services, facilities or interconnection agreements/arrangements offered by SBC ILEC affiliates in their in-region states by requiring Ameritech to tariff all interconnection provisions.

SBC/AMERITECH RESPONSE

TA96 and the Merger Order contemplate that CLEC and SBC/Ameritech will enter into Interconnection Agreements. The CLECs who have not yet negotiated an interconnection agreement in Illinois are direct beneficiaries of Condition 27 and now have additional tools to expeditiously enter into an interconnection agreement with SBC/Ameritech. With regard to the tariffing suggestion see the previous response to Procedural Issue #1.

CLEC REPLY

While CLECs always have the right to enter into interconnection agreements with SBC/Ameritech, nowhere does TA96 or the Merger Order provide that interconnection agreements are the exclusive or only way CLECs can obtain UNEs, services, facilities, or interconnection arrangements with SBC/Ameritech. Indeed, SBC/Ameritech has an unbundled network element (UNE) tariff, a ULS-IST tariff and a resale tariff on file, the terms of which are readily available to all requesting CLECs. In addition, SBC/Ameritech recently filed a collocation tariff that has been temporarily suspended pending investigation that incorporates terms and conditions of collocation. Certainly those tariffs are not informational only, but have been filed by SBC/Ameritech in accordance with its obligation under Section 13-501 of the PUA to tariff all telecommunications services it provides, and are for actual use by CLECs, irrespective of whether the CLECs have an existing interconnection agreement with SBC/Ameritech. For a further discussion of tariffing, see our response to Issue One.

ISSUE NUMBER NINE

CLECs should be able to opt into specific portions (i.e., specific paragraphs or provisions) of a contract without having to take the entire section.

SBC/AMERITECH RESPONSE

This issue is probably best addressed in terms of the specifics but as a general matter SBC/Ameritech agrees that a provision must include only related terms and conditions associated with the requested provision.

CLEC REPLY

The CLECs agree that they are able to opt into specific paragraphs or provisions of a contract without having to take the entire section. As discussed in Issue Five above and Issue Ten below, however, the CLECs disagree that the expiration date of the SBC agreement the provision is being imported from is a "related term and condition" to the provision or provisions being imported. As discussed in Issue Five above, to bootstrap the expiration date from the SBC agreement is contrary to the Commission's merger order, constitutes bad public policy and would result in regulatory havoc and confusion.

ISSUE NUMBER TEN

When CLEC's MFN/opt into a section or partial section of an existing contract, the portion that is requested for inclusion should carry the expiration date of the CLEC contract it is being imported into, not the initial contract from where it came.

SBC/AMERITECH RESPONSE

SBC/Ameritech disagrees. The termination date is clearly a related term and condition. If the parties negotiating the original contract reached agreement as to when a contract would expire the requesting CLEC cannot arbitrarily extend that provision by importing it into a new contract.

CLEC REPLY

The termination date is not a term and condition clearly related to the provision or provisions the CLECs desire to import. The termination date has absolutely no bearing on the significance or meaning of the provision(s) being imported. Said another way, the provision means or provides for the same thing, irrespective of what day, month or year the agreement it is being imported from expires. The desired provision(s) are in no way dependent upon the termination date.

It is ironic indeed that SBC/Ameritech raises the issue of arbitrariness when that is exactly what its position is. If, for example, a CLEC desires to import UNE loop provisions from an SBC agreement, it is no more arbitrary to require CLECs to import the provisions requiring the application of Texas or California law as it is to require the CLECs to import the termination date. In short, there is no substantive or dependent relationship between the provisions being imported and the termination date, and there is no requirement to import the termination date. Nor does the Commission's Merger Order allow SBC/Ameritech to impose a termination date different from the one already contained in the requesting CLEC's Illinois agreement.

By importing provisions from other SBC agreements absent the termination date, CLECS are not arbitrarily extending the provision by importing it into a new contract. To the contrary, as a condition of approving the Ameritech/SBC merger, the Commission gave CLECs the right to import specific provisions from other SBC agreements into their existing Illinois agreements. Those existing Illinois agreements are governed by the termination dates expressly set forth in those agreements. This process of importing UNEs, services, facilities, arrangements and agreements offered by SBC ILEC affiliates is one that is Commission-ordered and Commission-sanctioned. There is nothing arbitrary about it. In addition, requiring CLECs to import the termination date also raises the myriad legal and practical problems discussed in Issue Five above.

ISSUE NUMBER ELEVEN

If SBC arbitrated an issue in one of its states and was successful in getting its position incorporated into the interconnection agreement, does SBC consider those terms and provisions "agreed to" terms such that they will provide them to requesting CLECs in this collaborative process?

SBC/AMERITECH RESPONSE

SBC/Ameritech has no objection to including a provision of a contract that went through the arbitration process in which the position advocated by SBC was adopted. Such a provision could be included in the list of desired contract provisions being generated.

CLEC REPLY

While the CLECs generally agree with SBC/Ameritech's response, the CLECs disagree that the list being generated in this proceeding is limited to "contract provisions." As discussed in Issue Two and Issue Three above, there is no requirement in the Commission's merger order that the requested provisions must actually appear verbatim in a contract. It is enough that the request is a service, facility, arrangement or agreement that was not imposed upon SBC by arbitration.

ISSUE NUMBER TWELVE

How is the term "interconnection" to be defined for the purposes of this proceeding? For example, OSS and performance measures are included in the interconnection agreements, are they therefore included in the scope of this proceeding?

SBC/AMERITECH RESPONSE

As a general rule, any provision in an existing interconnection contract can be considered a candidate for inclusion in the list of desired items generated by the collaborative.

CLEC REPLY

Again, the CLECs generally agree with SBC/Ameritech's response, but disagree as discussed in Issues Two, Three, and Eleven above that the provisions requested in this collaborative proceeding are limited to provisions "in an existing interconnection contract." Of particular concern is the oral position espoused by SBC/Ameritech at the December 8 collaborative session that CLECs may be precluded from importing provisions from implementation plans and other business processes which were developed by SBC or jointly developed by SBC and the CLEC in the natural course of implementing their interconnection agreements. These plans and processes are integral to the operation and usefulness of the interconnection agreements, and are necessary in order to implement the terms of the interconnection agreements. As a practical matter, allowing a CLEC to import a desired contract provision but not the plan or process developed to implement that process will likely defeat the very purpose for which the provision is being imported, and will do little to accomplish the Commission's stated goal of furthering the "expansion of the competitive market in Illinois." *See*

Condition (27)(A) at 251. Consistent with the language of the Commission's merger order, as long as these implementation plans and processes were not imposed upon SBC by arbitration, SBC/Ameritech is required to provide them as a part of this collaborative process.

The CLECs are also concerned that the requested provisions, plans and processes effectuate the business purposes for which they were requested. This is a particular concern given the fact that most offerings are not made available in isolated or discrete sections of an agreement or plan, but are interspersed throughout the agreement or plan. Take, for example, an SBC agreement or plan in another state that the CLEC knows makes Enhanced Extended Links, or EELs, available. If a CLEC requests those sections it believes are necessary and relevant to obtain EELs, the CLECs expect that SBC/Ameritech and the CLEC will work together in this proceeding to ensure that all relevant provisions are imported such that EELs are readily available in Illinois. Only in this way will this process be made fruitful and truly "collaborative."

Supplemental Comments of Rhythms and Covad
ICC Interconnection Collaborative

Rhythms Links Inc. ("Rhythms") and Covad Communications Company ("Covad") submit these supplemental comments in the Illinois Commerce Commission's ("ICC") or ("Commission") Interconnection Collaborative. During the course of the collaborative, competitive local exchange carriers ("CLECs") identified a number of procedural/process issues critical to the meaningful implementation of Condition (27) of the SBC/Ameritech merger. SBC/Ameritech's responses to CLECs' questions and requests during the collaborative process illuminate SBC/Ameritech's restrictive interpretation of Condition (27). Rhythms and Covad take this opportunity to provide further comments on three key issues in interpreting Condition (27): (1) the appropriate procedure for adopting approved interconnection agreements/arrangements; (2) the expiration date of imported provisions; and (3) the proper scope of the pricing exception.

1. Procedure for Adopting "Approved" Interconnection Agreements/Arrangements. Illinois law requires SBC/Ameritech to tariff telecommunications services. Illinois Public Utilities Act 220 ILCS 5/13-501. The merger conditions require SBC/Ameritech to offer to Illinois CLECs those services, facilities and interconnection agreements/arrangements that are "approved" in the collaborative process. However, as demonstrated in the collaborative process, SBC/Ameritech has taken every opportunity to delay CLECs' efforts to opt into interconnection agreements. The carriers participating in the collaborative process proposed more than thirty-five agreements or arrangements appropriate for opt in purposes under Condition (27). SBC/Ameritech refused to make available nearly all of the requested agreements/arrangements. For the six interconnection arrangements SBC/Ameritech has agreed to make available in Illinois, it has shown no intention of providing them in an expeditious manner.

In order to ensure that CLECs benefit from the Merger Conditions, SBC/Ameritech must make available the provisions of the collaborative process through two mechanisms: (1) a filed tariff, as required by Illinois law and (2) an expedited "automatic adoption" process. First, as discussed in the December 15, 1999 CLEC Comments, [14] SBC/Ameritech is required by Illinois law to tariff all telecommunications service it provides, which would encompass all the services, facilities, interconnection arrangements and agreements arising from the collaborative process. Illinois Public Utilities Act 220 ILCS 5/13-501. Second, because the tariff may unduly delay adoption of the provisions agreed to during the collaboratives, SBC/Ameritech must also allow for an expedited adoption process. Such an expedited process would be consistent with the FCC's Interconnection Order and the procedures

[14] *CLEC Reply to Procedural/Process Issues*, December 15, 1999, at 2.

already implemented by several other state commissions. In addition, an expedited adoption process would minimize the potential for the types of abuse and delay that have already been experienced in Illinois proceedings.

As competitive carriers have previously demonstrated,[15] Ameritech has gone to great lengths to delay the process by which CLECs can "opt into" existing agreements. This is in spite of the fact that under both the Illinois Merger Conditions and federal law, SBC/Ameritech is required to make existing agreements available to competitors.[16] For instance, on November 5, 1998, the ICC found that Ameritech Illinois had violated Section 252(i) of the Federal Act and Sections 13-514(1) and (6) of the Illinois Public Utilities Act by failing to allow QST Communications, Inc. ("QST") to adopt the MCI/Ameritech agreement in its entirety. The Commission ordered Ameritech Illinois and QST to file with the Commission, for its approval under Section 252(i) of the Federal Act, the interconnection agreement that had been executed by both parties pursuant to the Commission order dated August 26, 1998. The Commission approved the agreement on February 18, 1999 -- nine months after QST first informed Ameritech that it wanted to avail itself of the opt in provisions of Section 252(i).

Because the Commission has no specific procedures in place for the approval of a 252(i) adoption, it has treated such requests as "negotiated" agreements for approval purposes and applied the same process used for negotiated agreements found in Part 763 of the Illinois Administrative Code. The limitations of processing a Section 252(i) adoption as a negotiated agreement are apparent from QST's attempt to opt into MCI's existing agreement and demonstrate how SBC/Ameritech can abuse and delay interconnection implementation. The problem is especially acute given that many interconnection arrangements are expected to expire in 2000. SBC/Ameritech should not be allowed to game the system by tying up CLECs – while the terms of their requested agreements are allowed to run out.

Expedited opt in procedures for in-state agreements were specifically contemplated by the Federal Communications Commission. *FCC First Report and Order on Local Competition,* CC Docket 96-98, Para.1321. The FCC concluded that a carrier seeking interconnection, network elements, or services pursuant to Section 252(i) need not make such requests pursuant to the procedures for initial Section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. Id. The FCC's order further states:

> [t]his interpretation [requiring expedited opt in procedures] furthers Congress's stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. We conclude that the

[15] See *CLEC Reply to Procedural/Process Issues*, December 15, 1999.
[16] Notable examples relate to CLECs attempts to opt into existing Illinois agreements pursuant to section 252(i) of the federal Act. See e.g., *QST Communications, Inc. v. Ameritech*, ICC Docket No 98-0603, November 9,1998.

> nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement. Id.

Thus, the FCC encourages rapid interconnection options for competitive carriers and discourages the types of delays envisioned by SBC/Ameritech.

The Commission's Merger Order contemplates a mechanism for "automatic adoption" of interconnection agreements. See *Merger Order*, Condition (27)(A), at 251-253. The ICC's merger conditions transcend federal limitations with respect to the types of agreements that may be imported. This Commission has the state statutory authority, and did in fact, condition the merger on the expectation that SBC/Ameritech would provide for the importation of negotiated agreements. The Merger Order states: "The Commission finds this condition [requiring the rates to be imported along with the interconnection agreement] to be valuable to CLECs and the expansion of the competitive market in Illinois, particularly since Section 252(i) of TA 96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states." Id. at 253. The Merger Order clearly envisions an expansion of the opt in process to allow for the automatic adoption of interconnection agreements from other SBC/Ameritech states. Automatic adoption would necessarily minimize delays in the opt in process, while increasing the desired efficiency underlying Section 252.

The expedited adoption process would also be consistent with the steps taken by several other state commissions to streamline the process for allowing carriers to opt into existing agreements. For instance, the Indiana Utility Regulatory Commission ("IURC") has adopted guidelines for an expedited approval process for interconnection agreements. Pursuant to those guidelines, a carrier may file a request for adoption of a previously approved interconnection agreement by submitting a signed letter setting forth the adoption of such agreement; the agreement itself does not need to be filed. The letter must describe any changes to the original agreement made by the requesting carrier, although such changes may not modify the substance of the original agreement. The practice adopted in Indiana provides a reasonable method for responding to carrier requests for opting into existing agreements. The IURC issues an order approving or rejecting the adoption of an interconnection agreement within 30 days of the initial request.[17]

[17] *IURC General Administrative Order, Interconnection Procedures, Appendix A*.

SBC committed to the Texas Public Utility Commission that CLECs would have an expedited opt in process as a result of the T2A settlement.[18] Specifically, SBC stated:

> Any CLEC that wants to accept this entire Agreement, shall notify SWBT in writing. Within 5 business days of such notification, SWBT shall present the CLEC with a signed Interconnection Agreement substantively identical to this Agreement. Within 5 business days of receipt of the SWBT signed Interconnection Agreement, the CLEC shall sign the Interconnection Agreement and file it with this Commission. The signed Interconnection Agreement between SWBT and the CLEC shall become effective by operation of law immediately upon filing with the Commission (the "Effective Date"). *Interconnection Agreement-TX (T2A) General Terms and Conditions*, at 3.

SBC/Ameritech's response to Rhythms' and Covad's requests to import into Illinois -- pursuant to Condition 27 of the Merger Order -- the unbundled loop section from their respective California agreements illustrates SBC/Ameritech's continued delay tactics.[19] SBC/Ameritech acknowledges that it is required to make this interconnection arrangement available under the terms of Condition (27). SBC/Ameritech's protracted negotiation process effectively disallows carriers from efficiently opting into a desired interconnection agreement. SBC/Ameritech's position is contrary to the ICC's Merger Order and SBC/Ameritech's assertions that competitors would benefit from the merger.

SBC/Ameritech argues, however, that negotiation is necessary to determine, among other things, whether Rhythms or Covad are requesting SBC/Ameritech to build a new OSS interface in Illinois to replicate an OSS interface referenced in the California provision. SBC/Ameritech's position is merely an attempt to delay making such provision available to the parties. Moreover, while SBC/Ameritech suggested that negotiations could be concluded in a matter of days, it was unable to provide any indication of just how quickly the provision could be implemented. For example, during the January 5, 2000 collaborative, SBC/Ameritech indicated that the company was already moving toward an unbundled loop offering similar to the loop section in the California agreement,[20] and that a request to import the California loop section into Illinois would not affect the timetable for its implementation. In other words, Rhythms would not receive the loops available under its California contract until Ameritech was ready to make a general offering in Illinois. Thus, Rhythms faces the decision of embarking upon potentially lengthy negotiations for a meaningless loop provision or

[18] SBC reiterated this commitment in its comments to the FCC regarding the *Evaluation of the Public Utility Commission of Texas*, FCC, CC. Doc. 00-4, at 4, January 31, 2000.

[19] Rhythms' and Covad's California agreements are virtually indistinguishable. Nonetheless, Covad and Rhythms received different responses to their loop requests from SBC/Pacific Bell. This only emphasizes the need to tariff loop offerings to ensure that carriers are not discriminated against during negotiations.

[20] Based on available information, the commentators believe this assertion is incorrect.

waiting for Ameritech to implement its "new loops offering" on its own timetable. As this example illustrates, SBC/Ameritech has clearly indicated that it has no intention of making a meaningful offering of even those agreements/arrangements it had agreed to provide during the collaborative meetings. Thus, it is imperative that the Commission require SBC/Ameritech to immediately implement the interconnection services, facilities, and arrangements agreed to during the collaborative process and to offer in Illinois tariffs for those services, facilities and interconnection agreements/arrangements that are "approved" in the collaborative process.

2. Expiration Date. The value of Condition (27) would be undermined if the Commission were to validate SBC/Ameritech's view of the expiration date of a service, facility or interconnection agreement/arrangement. SBC/Ameritech has asserted that the provision opted into under this condition carries the expiration date of the original model agreement, rather than the date of the contract into which it is being imported. SBC/Ameritech's position is contrary to the plain language of the Merger Order.[21] Moreover, if SBC/Ameritech's position is upheld, there are few services, facilities or interconnection agreements/arrangements that would have any significant remaining life by the time the parties try to implement them.

As a result, CLECs are unlikely to engage in the extended negotiation, approval, and implementation process to opt into a short-term service, facility, or interconnection agreement/arrangement. Moreover, at the expiration of such arrangements, CLECs realize that protracted negotiations will likely be required in order to establish a replacement agreement. Additionally, as indicated above, Ameritech has a history of delaying carriers' rights to opt into existing agreements. Rhythms and Covad should not be placed in the situation where SBC/Ameritech is allowed to delay the "opt in" process only to have the requested agreement expire. Instead, this Commission should supplement the process already contemplated pursuant to Section 252(i) of the Federal Act with an expedited opt in process for CLECs to efficiently adopt services, facilities, or interconnection agreements/arrangements.

Given the current situation, the re-negotiation of an expired interconnection agreement involves significant delays. SBC/Ameritech's assumption that the original date of expiration carries over to the new agreement is further evidence of its intent to delay CLECs' irrespective of the Merger Conditions. Rhythms and Covad believe the provision that is imported should necessarily adopt the expiration date of the contract into which it is inserted.[22] This reading of Condition (27) helps to create an efficient process that is in line with the policy underlying Section 252 of the Federal Act. By contrast, SBC/Ameritech's position leads to an administrative nightmare that will

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[21] See *CLEC Reply to Procedural/Process Issues*, December 15 at 8; Condition (27) "Interconnection – Ameritech Illinois will provide interconnection in accordance with the following interconnection commitments. Such interconnection provisions shall be available for an indefinite time in Illinois." *SBC/Ameritech Merger Order* at 250.

[22] This is especially true where CLECs simply import individual paragraphs or sections of an agreement. It would be unworkable for the parties to import dozens of alternative dates into a contract.

consume the resources of the Commission and CLECs and foster inefficient management of interconnection agreements.

3. Pricing Provision. Finally, SBC/Ameritech misinterprets the language in Condition (27) regarding the pricing of services, facilities or interconnection agreements/arrangements offered pursuant to that condition. Condition (27) states:

> SBC through its subsidiary, Ameritech Illinois, shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements at the same rates or prices as SBC makes such offerings in SBC in-region territories on a permanent basis since costs may and do vary by state, and pricing in each state reflects state pricing policies and costs. However, Ameritech Illinois should not be permitted to delay implementation of any interconnection provision on the basis of pricing. Accordingly, the Commission further orders the Joint Applicants to import the rates agreed to in the relevant state in which the imported interconnection agreement was originally reached, until such time as Illinois-specific rates can be determined. At such time, the interim rates would be subject to a true-up. *SBC/Ameritech Merger Order,* Condition 27 at 252-53.

As contemplated by the Commission's Order, CLECs should be able to bring in terms and conditions of agreements from other SBC/Ameritech states. Under the Illinois Merger Conditions, where Illinois-specific rates exist, a CLEC may import the terms and conditions of another agreement, but may not import the other state's prices. In circumstances where there are no Illinois-specific rates, a CLEC may then import the other state's pricing. The Commission's Order recognizes that such pricing is interim in nature until Illinois-specific prices are established.

SBC/Ameritech has read the Merger Conditions language so broadly that it has refused to import any terms and conditions that relate in any manner to pricing. This interpretation became apparent at the January 5, 2000 collaborative meeting. As noted above, Rhythms has sought to import into Illinois the unbundled loop section from Rhythms' interconnection agreement with Pacific Bell in California. In that agreement, Pacific Bell provides five types of unbundled loops, including 2-wire digital ISDN/xDSL capable links. In California, the ISDN/xDSL capable links provided by Pacific Bell are defined as loops capable of being used for xDSL services without any further special construction or loop conditioning.[23]

During the January 5, 2000 collaborative, SBC/Ameritech indicated that, while Rhythms loop provisions could be imported, Ameritech would add special construction and conditioning charges to the loop (in addition to the non-recurring and recurring charges for such loop). SBC/Ameritech's position is unsupportable. Under the clear

[23] In Illinois, even though SBC/Ameritech includes ADSL or HDSL offerings in some interconnection agreements, the ILEC seeks to needlessly assess additional special construction and conditioning charges.

language of the Merger Conditions, SBC/Ameritech must provide Rhythms its California unbundled loops section with the California rates as interim pricing until the Illinois tariff rates are in effect.[24]

SBC/Ameritech's position regarding special construction charges emphasizes the need to tariff the services and facilities made available during this collaborative. The Wisconsin Public Service Commission ("WPSC") recognized this need for tariffing in its recently issued order regarding the investigation of the services of Ameritech's digital service affiliate.[25] The WPSC noted that tariff pricing aims to prevent discrimination among similarly situated purchasers of tariffed services. Id. at 25. The WPSE concluded that the assessment of special construction charges is directly contrary to the policy behind tariff pricing which should prevent injury to competition or discrimination resulting from subjective human intervention. Id. at 25-26. Special construction charges inhibit the ability of competitors to market their services. Id. at 25. For example, the assessment of special construction charges often delays the provisioning of service to competitor's customers. Additionally, excessive special construction charges cannot be recovered during the predictable service lives of competitor's customers. Therefore, in some cases, competitors are forced to deny service to potential customers.

By assessing special construction and conditioning charges, SBC/Ameritech would essentially be ignoring the terms of the California agreement and offering the same types of unbundled loops it is currently providing in Illinois, presumably with the same associated problems. Tariff pricing is essential to prevent injury to competition. In fact, in the WPSC's Final Decision and Certificate, the Commission noted that tariff pricing "prevents injury to competition by the potential discrimination inherent in pre-ordering and ordering OSS that are excessively reliant upon subjective, human intervention and that lack strong controls." Id. at 25-26. Moreover, under Illinois law, telecommunications services must be tariffed. Illinois Public Utilities Act 220 ILCS 5/13-501. Therefore, in addition to importing terms and conditions from other jurisdictions, SBC/Ameritech is required to tariff all terms and conditions that qualify as telecommunications services.

[24] See note 8.

[25] *Petition of Ameritech Advanced Data Services of Wisconsin, Inc. for Authorization to Resell Frame Delay Switched Multimegabit Data, and Asynchronous Transfer Mode Services on an Intrastate Basis and to Operate as an Alternative Telecommunications Utility in Wisconsin*. 7825-TI-100*; Investigation into the Digital Services and Facilities of Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin*) 6720-TI-154, January 13, 2000.

Essentially, SBC/Ameritech's narrow interpretation of the Commission's language in Condition (27) undermines the application of this provision. Therefore, the Commission should clarify that SBC/Ameritech is misinterpreting the pricing language in Condition (27).